

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

RICHARD BRIAN HORWITZ	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-14-644-D
	)	
JOHN FOX, Warden, FCI El Reno,	)	
	)	
Respondent.	)	

**ORDER OF DISMISSAL**

This matter is before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell on June 23, 2014 [Doc. No. 6] and July 14, 2014 [Doc. No. 8], pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 and sought *in forma pauperis* status. However, Magistrate Judge Mitchell determined that Petitioner had adequate funds to prepay the filing fee, recommended the motion be denied and directed Petitioner to pay the full filing fee on or before July 13, 2014. The Magistrate Judge also recommended that if Petitioner failed to timely pay the fee, the action should be dismissed without prejudice to refile. The Court docket reflects that on July 7, 2014, Petitioner paid the filing fee.

Upon payment of the filing fee, the Magistrate Judge proceeded to review the petition for writ of habeas corpus and issued a second Report and Recommendation on July 14, 2014 [Doc. No. 8]. Magistrate Judge Mitchell recommended dismissal of the petition as duplicative, noting that Petitioner had previously filed an identical petition in Case No. CIV-14-567-D, which remained pending before the Court at the time he filed the petition in the instant action.

Petitioner filed an Objection to the Report and Recommendation [Doc. No. 9]. In the objection, Petitioner does not refute that the current action is duplicative of Case No. CIV-14-567-D.

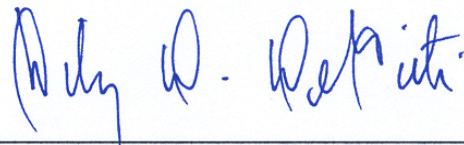
Instead, he claims the duplicative filing was not his fault. Petitioner contends he mailed a copy of his petition to the U.S. Attorney's Office and that office then forwarded the petition to the Clerk of this Court. Petitioner contends the petition was then erroneously filed as a second action. Petitioner further contends that because he has paid the filing fee, any issue related to his *in forma pauperis* application is null and void and requests that this action proceed.

Because Petitioner concedes the current action is duplicative of Case No. CIV-14-567-D, the Court finds the dismissal of the action without prejudice is proper. The Court further finds, however, that the duplicative filing was not the fault of Petitioner and directs the Clerk of this Court to refund the \$5 filing fee to Petitioner.

IT IS THEREFORE ORDERED that the Report and Recommendation issued July 14, 2014 [Doc. No. 8] is ADOPTED in its entirety and this action is dismissed without prejudice.

IT IS FURTHER ORDERED that the Report and Recommendation issued June 23, 2014 [Doc. No. 6] is DENIED as moot. The Clerk of this Court is directed to refund the \$5 filing fee to Petitioner.

IT IS SO ORDERED this 22<sup>nd</sup> day of July, 2014.



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TIMOTHY D. DEGIUSTI  
UNITED STATES DISTRICT JUDGE